

SENATE BILL No. 506

DIGEST OF INTRODUCED BILL

Citations Affected: IC 31-40; IC 35-38-2.

Synopsis: Probation user's fees. Imposes an administration fee for each person placed on probation in a juvenile or adult court. Requires the administration fee to be collected before any other probation user fee. Allows a probation department to: (1) receive payment for fees by credit card; and (2) petition a court to impose or increase probation fees if the financial position of a person changes while the person is on probation. Allows a court to: (1) enforce an order to pay probation user fees by lien or garnishing of wages; (2) impose an increased probation user fee in certain circumstances; and (3) issue an order preventing a person from receiving a driver's license or permit if the person is delinquent in payment of probation fees. Allows more than one initial probation user's fee to be imposed on a person placed on probation for multiple offenses.

Effective: July 1, 2003.

Meeks C

January 23, 2003, read first time and referred to Committee on Judiciary.

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First Regular Session 113th General Assembly (2003)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2002 Regular or Special Session of the General Assembly.

SENATE BILL No. 506

A BILL FOR AN ACT to amend the Indiana Code concerning criminal law and procedure.

Be it enacted by the General Assembly of the State of Indiana:

- 1 SECTION 1. IC 31-40-1-1.7 IS ADDED TO THE INDIANA CODE
2 AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY
3 1, 2003]: **Sec. 1.7. (a) A person may pay a monthly probation user's**
4 **fee under section 1 or 1.5 of this chapter before the date the**
5 **payment is required to be made without obtaining the prior**
6 **approval of a court or a probation department. However, if a**
7 **delinquent child is discharged from probation before the date the**
8 **delinquent child was scheduled to be released from probation, any**
9 **monthly probation user's fee paid in advance for the delinquent**
10 **child may not be refunded.**
11 **(b) A probation department may petition a court to:**
12 **(1) impose a probation user's fee on a person; or**
13 **(2) increase a person's probation user's fee;**
14 **under section 1 or 1.5 of this chapter if the financial ability of the**
15 **person to pay a probation user's fee changes while the person is on**
16 **probation.**
17 **(c) An order to pay a probation user's fee under section 1 or 1.5**



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of this chapter:

(1) is a judgment lien that:

(A) attaches to the property of the person subject to the order;

(B) may be perfected;

(C) may be enforced to satisfy any payment that is delinquent under section 1 or 1.5 of this chapter; and

(D) expires;

in the same manner as a judgment lien created in a civil proceeding;

(2) is not discharged by the completion of the person's probationary period or other sentence imposed on the person; and

(3) is not discharged by the liquidation of a person's estate by a receiver under IC 32-30-5.

(d) A delinquent child placed on probation for more than one (1) delinquent act:

(1) may be required to pay more than one (1) initial probation user's fee; and

(2) may not be required to pay more than one (1) monthly probation user's fee per month;

to the probation department.

(e) If a court orders a person to pay a probation user's fee under section 1 or 1.5 of this chapter, the court may garnish the wages, salary, and other income earned by the person to enforce the order.

(f) If:

(1) a person is delinquent in paying the person's probation user's fees required under section 1 or 1.5 of this chapter; and

(2) the person's driver's license or permit has been suspended or revoked or the person has never been issued a driver's license or permit;

the court may order the bureau of motor vehicles to not issue a driver's license or permit to the person until the person has paid the person's delinquent probation user's fees.

SECTION 2. IC 31-40-2-1 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2003]: Sec. 1. (a) Subject to IC 31-40-1-3, a juvenile court may order each delinquent child who receives supervision under IC 31-37-19 or the child's parent, guardian, or custodian to pay to the probation department:

(1) an initial probation user's fee of at least twenty-five dollars (\$25) but not more than one hundred dollars (\$100); and

(2) a probation user's fee of at least ~~five~~ **ten** dollars (~~\$5~~) (**\$10**) but



not more than ~~fifteen~~ **twenty-five** dollars ~~(\$15)~~ **(\$25)** for each month the child receives supervision; and

(3) an administrative fee of one hundred dollars (\$100) if the delinquent child is supervised by a juvenile probation officer in an alcohol abuse deterrent program under IC 9-30-9.

If a clerk of a court collects a probation user's fee, the clerk may keep not more than six percent (6%) of the fee to defray the administrative costs of collecting the fee.

(b) The probation department or clerk shall collect the administrative fee before collecting any other fee under subsection (a) and shall transfer the money to the county treasurer for deposit in the county general fund.

~~(b)~~ (c) The probation department shall deposit the probation user's fees paid under subsection (a) into the county supplemental juvenile probation services fund.

(d) In addition to other methods of payment allowed by law, a probation department may accept payment of fees required under this section and section 1.5 of this chapter by credit card (as defined in IC 14-11-1-7). The liability for payment is not discharged until the probation department receives payment or credit from the institution responsible for making the payment or credit.

SECTION 3. IC 31-40-2-1.5 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2003]: **Sec. 1.5. Notwithstanding the probation user's fee amounts established under section 1 of this chapter, a court may order a person to pay a probation user's fee that exceeds the maximum amount allowed under section 1 of this chapter if:**

(1) the person was placed on probation in another state and moved or was transferred to Indiana;

(2) the other state allows a higher probation user's fee than the maximum amount allowed under section 1 of this chapter; and

(3) the probation user's fee the court orders the person to pay does not exceed the maximum amount allowed in the other state.

SECTION 4. IC 35-38-2-1, AS AMENDED BY P.L.170-2002, SECTION 132, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2003]: **Sec. 1. (a) Whenever it places a person on probation, the court shall:**

(1) specify in the record the conditions of the probation; and

(2) advise the person that if the person violates a condition of

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probation during the probationary period, a petition to revoke probation may be filed before the earlier of the following:

(A) One (1) year after the termination of probation.

(B) Forty-five (45) days after the state receives notice of the violation.

(b) In addition, if the person was convicted of a felony and is placed on probation, the court shall order the person to pay to the probation department the user's fee prescribed under subsection (c). If the person was convicted of a misdemeanor, the court may order the person to pay the user's fee prescribed under subsection (d). The court may:

(1) modify the conditions (except a fee payment under subsection (c)); or

(2) terminate the probation;

at any time. If the person commits an additional crime, the court may revoke the probation. **If a clerk of a court collects a probation user's fee, the clerk may keep not more than six percent (6%) of the fee to defray the administrative costs of collecting the fee.**

(c) In addition to any other conditions of probation, the court shall order each person convicted of a felony to pay:

(1) not less than twenty-five dollars (\$25) nor more than one hundred dollars (\$100) as an initial probation user's fee;

(2) a monthly probation user's fee of not less than ~~five~~ **fifteen** dollars ~~(\$5)~~ **(\$15)** nor more than ~~fifteen~~ **thirty** dollars ~~(\$15)~~ **(\$30)** for each month that the person remains on probation;

(3) the costs of the laboratory test or series of tests to detect and confirm the presence of the human immunodeficiency virus (HIV) antigen or antibodies to the human immunodeficiency virus (HIV) if such tests are required by the court under section 2.3 of this chapter; ~~and~~

(4) an alcohol abuse deterrent fee and a medical fee set by the court under IC 9-30-9-8, if the court has referred the defendant to an alcohol abuse deterrent program; **and**

(5) an administrative fee of one hundred dollars (\$100);
to the probation department.

(d) In addition to any other conditions of probation, the court may order each person convicted of a misdemeanor to pay:

(1) not more than a fifty dollar (\$50) initial probation user's fee;

(2) ~~not more than a ten dollar (\$10)~~ monthly probation user's fee **of not less than ten dollars (\$10) nor more than twenty dollars (\$20)** for each month that the person remains on probation; ~~and~~

(3) the costs of the laboratory test or series of tests to detect and confirm the presence of the human immunodeficiency virus (HIV)

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antigen or antibodies to the human immunodeficiency virus (HIV)
if such tests are required by the court under section 2.3 of this
chapter; **and**

(4) an administrative fee of fifty dollars (\$50);
to the probation department.

**(e) The probation department or clerk shall collect the
administrative fee before collecting any other fee under subsection
(c) or (d) and shall transfer the money to the:**

**(1) county treasurer if the probation department of a county
collects the fee; or**

**(2) city or town fiscal officer if the probation department of a
city or town collects the fee;**

**for deposit in the county (for fees collected by a county probation
department) or city or town (for fees collected by a city or town
probation department) general fund.**

~~(e)~~ **(f) Except for money from administrative fees under
subsections (c)(5) and (d)(4),** all money collected by the probation
department under this section shall be transferred to the county
treasurer who shall deposit the money into the county supplemental
adult probation services fund. The fiscal body of the county shall
appropriate money from the county supplemental adult probation
services fund to the county, superior, circuit, or municipal court of the
county that provides probation services to adults.

~~(f)~~ **(g) Except for money from administrative fees under
subsections (d)(4),** all money collected by the probation department of
a city or town court under this section shall be transferred to the fiscal
officer of the city or town. The fiscal officer shall deposit the money
into the local supplemental adult probation services fund. The fiscal
body of the city or town shall appropriate money from the local
supplemental adult probation services fund to the city or town court of
the city or town for the court's use in providing probation services to
adults or for the court's use for other purposes as may be appropriated
by the fiscal body. Money may be appropriated under this subsection
only to those city or town courts that have an adult probation services
program. If a city or town court does not have such a program, the
money collected by the probation department must be transferred and
appropriated as provided under subsection (e).

~~(g)~~ **(h) Except as provided in subsection (i),** the county or local
supplemental adult probation services fund may be used only to
supplement probation services and to increase salaries for probation
officers. A supplemental probation services fund may not be used to
replace other funding of probation services. Any money remaining in

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the fund at the end of the year does not revert to any other fund but continues in the county or local supplemental adult probation services fund.

~~(h)~~ **(i)** A person placed on probation for more than one (1) crime:

(1) may ~~not~~ be required to pay more than ~~(h)~~ one (1) initial probation user's fee; and

(2) **may not be required to pay more than** one (1) monthly probation user's fee per month;

to the probation department.

~~(i)~~ **(j)** This subsection applies to a city or town located in a county having a population of more than one hundred eighty-two thousand seven hundred ninety (182,790) but less than two hundred thousand (200,000). Any money remaining in the local supplemental adult probation services fund at the end of the local fiscal year may be appropriated by the city or town fiscal body to the city or town court for use by the court for purposes determined by the fiscal body.

(k) In addition to other methods of payment allowed by law, a probation department may accept payment of fees required under this section and section 1.5 of this chapter by credit card (as defined in IC 14-11-1-7). The liability for payment is not discharged until the probation department receives payment or credit from the institution responsible for making the payment or credit.

SECTION 5. IC 35-38-2-1.5 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2003]: **Sec. 1.5. Notwithstanding the probation user's fee amounts established under section 1 of this chapter, a court may order a person to pay a probation user's fee that exceeds the maximum amount allowed under section 1 of this chapter if:**

(1) the person was placed on probation in another state and moved or was transferred to Indiana;

(2) the other state allows a higher probation user's fee than the maximum amount allowed under section 1 of this chapter; and

(3) the probation user's fee the court orders the person to pay does not exceed the maximum amount allowed in the other state.

SECTION 6. IC 35-38-2-1.7 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2003]: **Sec. 1.7. (a) A person may pay a monthly probation user's fee under section 1 or 1.5 of this chapter before the date the payment is required to be made without obtaining the prior**



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approval of a court or a probation department. However, if the person is discharged from probation before the date the person was scheduled to be released from probation, any monthly probation user's fee paid in advance by the person may not be refunded.

(b) A probation department may petition a court to:

(1) impose a probation user's fee on a person; or

(2) increase a person's probation user's fee;

under section 1 or 1.5 of this chapter if the financial ability of the person to pay a probation user's fee changes while the person is on probation.

(c) An order to pay a probation user's fee under section 1 or 1.5 of this chapter:

(1) is a judgment lien that:

(A) attaches to the property of the person subject to the order;

(B) may be perfected;

(C) may be enforced to satisfy any payment that is delinquent under section 1 or 1.5 of this chapter; and

(D) expires;

in the same manner as a judgment lien created in a civil proceeding;

(2) is not discharged by the completion of the person's probationary period or other sentence imposed on the person; and

(3) is not discharged by the liquidation of a person's estate by a receiver under IC 32-30-5.

(d) If a court orders a person to pay a probation user's fee under section 1 or 1.5 of this chapter, the court may garnish the wages, salary, and other income earned by the person to enforce the order.

(e) If:

(1) a person is delinquent in paying the person's probation user's fees required under section 1 or 1.5 of this chapter; and

(2) the person's driver's license or permit has been suspended or revoked or the person has never been issued a driver's license or permit;

the court may order the bureau of motor vehicles to not issue a driver's license or permit to the person until the person has paid the person's delinquent probation user's fees.

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